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Orchid Healthcare,  
Orchid Chemicals & Pharmaceuticals Ltd. and  
Orgenus Pharma Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SEPRACOR INC.,

Plaintiff,

v.

ORCHID HEALTHCARE (a Division of  
ORCHID CHEMICALS &  
PHARMACEUTICALS, LTD.), ORCHID  
CHEMICALS & PHARMACEUTICALS,  
LTD., ORGENUS PHARMA INC.

Defendants.

Civil Action No. 2:09-CV-01302

Hon. Dennis M. Cavanaugh, U.S.D.J.  
Hon. Mark Falk, U.S.M.J.

**Document Electronically Filed**

**STIPULATION AND ORDER**

WHEREAS, Defendants Orchid Healthcare (a Division of Orchid Chemicals & Pharmaceuticals Ltd.) has submitted an abbreviated new drug application

("ANDA") to the U.S. Food and Drug Administration ("FDA") seeking FDA approval for Eszopiclone Tablets, 1 mg, 2 mg and 3 mg ("the Orchid ANDA product") before expiration of U.S. Patent Nos. 6,319,926 ("the '926 patent"), 6,444,673 ("the '673 patent"), 6,864,257 ("the '257 patent") and 7,381,724 ("the '724 patent").

WHEREAS, Plaintiff Sepracor Inc. ("Sepracor") has filed suit against Defendants Orchid Healthcare (a Division of Orchid Chemicals & Pharmaceuticals Ltd.), Orchid Chemicals & Pharmaceuticals Ltd. and Orgenus Pharma Inc. (collectively, "Orchid") alleging, *inter alia*, infringement of the '926, '673, '257 and '724 patents under 35 U.S.C. § 271(e)(2)(A).

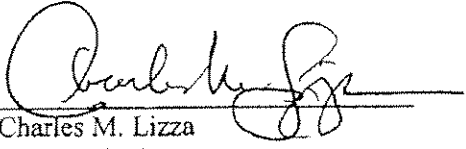
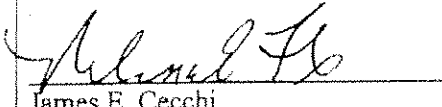
WHEREAS, in its May 20, 2009 "Answer, Defenses and Counterclaims" ("Answer") (Dkt. No. 63), Orchid has sought a trial by jury for all matters for which it is entitled to a trial by jury.

WHEREAS, Sepracor does not presently seek money damages from Orchid in this action.


WHEREAS, Orchid agrees to withdraw voluntarily its demand for a trial by jury without prejudice if this Court grants to it leave to reinstate its demand for trial by jury in the event that Sepracor requests an award of monetary damages.

NOW THEREFOR, Plaintiff Sepracor and Defendant Orchid stipulate and agree, subject to the approval of the Court, that Orchid hereby withdraws its jury demand set forth in its Answer without prejudice to renew its demand in the event that Sepracor files a subsequent pleading in which it seeks damages in this action.

IT IS SO STIPULATED.

<p>Dated: June 5, 2009</p> <p>SAUL EWING LLP</p> <p></p> <p>Charles M. Lizza William C. Baton One Riverfront Plaza Newark, NJ 07102 (973) 286-6700</p> <p><i>Attorneys for Plaintiff Sepracor Inc.</i></p> <p>OF COUNSEL:</p> <p>Joseph M. O'Malley, Jr. Bruce M. Wexler David M. Conca Eric W. Dittmann PAUL, HASTINGS, JANOFSKY &amp; WALKER LLP 75 East 55th Street New York, NY 10022 (212) 318-6000</p>	<p>Dated: 6/8/09</p> <p>CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI, STEWART &amp; OLSTEIN</p> <p></p> <p>James E. Cecchi Melissa E. Flax 5 Becker Farm Road Roseland, New Jersey 07068-1739 (973) 994-1700</p> <p><i>Attorneys for Defendants Orchid Healthcare, Orchid Chemicals &amp; Pharmaceuticals Ltd. and Organus Pharma Inc.</i></p> <p>OF COUNSEL:</p> <p>William A. Rakoczy Paul J. Molino Deanne M. Mazzochi Brian A. Garcia Eric R. Hunt RAKOCZY MOLINO MAZZOCHI SIWIK LLP 6 West Hubbard Street, Suite 500 Chicago, Illinois 60654 (312) 222-6301</p>
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SO ORDERED:

 6/17/09  
~~HON. MARK FALK, U.S.M.J.~~  
Dennis M. Cavanaugh  
U.S. District Judge